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Pavesich v. New Eng. Life Ins. Co., 122 Ga. 190, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. Rep. 104; *Vanderbilt v. Mitchell*, 71 N. J. Eq. 632, 63 Atl. 1107; *Edison v. Edison Mfg. Co.*, 73 N. J. Eq. 136, 67 Atl. 392; *Foster-Milburn Co. v. Chinn*, 134 Ky. 424, 120 S. W. 364; dissenting opinion of Judge Gray in *Robertson v. Rochester Folding Box Co.*, *supra*; *Schuyler v. Curtis*, 147 N. Y. 434, 42 N. E. 22, 31 L. R. A. 286, 49 Am. St. Rep. 671, 4 Harv. Law Rev. 193.—American Law Review.

Note.—See leading article in XII Va. Law Reg. 91.

Duty of Driver of Vehicle Overtaking Vehicle Moving in Same Direction.—In a recent well-considered Nebraska case, *Hackett v. Alamito Sanitary Dairy Co.* (Nov. 14, 1911), it was held that the duty of the driver of a vehicle overtaking another vehicle, to keep to the proper side of the road, was not an absolute one. But that if he does not do so, he must exercise a greater degree of diligence than would be necessary if he were on the proper side of the highway.

Except for the statute in this state with respect to motor vehicles, there has been neither statutory enactment nor adjudication defining the rights of one attempting to pass another driving along a road or street in front of him. An examination of the English cases bearing upon the question whether there is any duty to keep on the proper side of the road, shows that there is no absolute duty but that the whole question is one of negligence. If the accident would not have happened but for the fact that the defendant violated the law of the road, he will be liable. In other words he must exercise greater diligence and keep a better lookout to avoid a collision than would be requisite if he confined himself to the proper side of the road. *Pluckwell v. Wilson*, 5 (Eng.) C. & P. 375; *Wayde v. Lady Carr*, 2 Dow. & Ry. (Eng.) 255.

The decisions of the various courts are somewhat confusing; some of them being based upon statutes, and others are not in harmony with each other. In England, the rule of the road requires persons driving, meeting other vehicles, to keep to the left, and that in passing the foremost bears to the left, while the other passes on his right; while in the United States and upon the Continent of Europe the rule is that persons meeting must keep to the right, and the usual custom is to pass to the left of a vehicle ahead.

In determining the true rule, we will endeavor to discriminate and to confine our examination to cases where accidents have been caused when passing others driving in the same direction.

It may be observed here, before going further that the English courts also hold that the rule as to a carriage being on the proper side of the road does not apply with respect to foot passengers; for, as regards foot passengers, a carriage may go on either side. *Cotterell v. Starkey*, 8 C. & P. (Eng.) 691; *Lloyd v. Ogleby*, 5 C. B. N. S. (Eng.) 667.

The rule in America does not seem to be clear and well settled, as to the duty of one who is driving a vehicle where others may desire to pass. It may be said that a number of cases based on statutes, and applying to cases of meeting vehicles, have been cited and applied by some writers as establishing a rule where persons were driving in the same direction. This has, no doubt, led to some of the confusion.

Bolton v. Colder, 1 Watts (Pa.) 360, holds that it is not the law that, where carriages are passing in the same direction, the leading carriage should be inclined to the right and the other to the left; but that the law is that "a traveler may use the middle or either side of a public road at his pleasure, and without being bound to turn aside for another traveling in the same direction, provided there be convenient room to pass on the one hand, or on the other." The following cases, in the main, hold the same doctrine, but perhaps not all so positively: *Foster v. Goddard*, 40 Me. 64; *Clifford v. Tyman*, 61 N. E. 508; *Elenz v. Conrad*, 123 Iowa, 522, 99 N. W. 138; *Brennan v. Richardson*, 38 App. Div. 463, 56 N. Y. Supp. 428; *Altenkirch v. National Biscuit Co.*, 127 App. Div. 307, 111 N. Y. Supp. 284; *Rand v. Syms*, 162 Mass. 163, 38 N. E. 196; *Meservey v. Lockett*, 161 Mass. 332, 37 N. E. 310; *Bierbach v. Goodyear Rubber Co.* (C. C.) 15 Fed. 490. Mr. Thompson (*Thompson, Negligence*, vol. 1, §§ 1289, 1290) seems to be of the opinion that the "law of the road" does not apply in the case of teams going in the same direction—citing *Clifford v. Tyman*, *supra*. He criticises the doctrine of *Bierbach v. Goodyear Rubber Co.*, *supra*, that a driver is under no obligation to give notice to those behind him when he seeks to turn, and that the rule of reasonable care exacts a greater degree of attention from the driver of the team behind than from the driver that turns out, saying, "More or less doubt attends the foregoing exposition of the law." Mr. Elliott, in *law of Roads and Streets* (volume 2 (3d Ed.) § 1084), says, after stating the doctrine of *Bolton v. Colder*, *supra*, and citing a number of other cases: "The only rule of general application that can be laid down is that he who attempts to pass another going in the same direction must do so in such manner as may be most convenient under the circumstances of the case, and if negligent, and damage results to the person passed, the former must answer for it, unless the latter by his own recklessness or carelessness brought the disaster upon himself. There are, however, statutes in some jurisdictions regulating the mode of passing, especially in regard to automobiles, and it is believed that, both under such statutes and in their absence, the usual mode, under ordinary circumstances, is for the traveler in the rear to pass on the left of the vehicle in advance."

In Massachusetts, it was first held that if a person driving left the proper side of the street and interfered with others, he was responsible, as a matter of law, for the consequences. *Fales v. Fearborn*, 1

Pick. (Mass.) 345. But it was afterwards settled in that state that a person is not negligent, as a matter of law, by driving on the wrong side of the street. *Wood v. Boston Elevated R.*, 188 Mass. 161, 74 N. E. 298; *Galbraith v. West End Street R. Co.*, 165 Mass. 572, 43 N. E. 501. On the other hand, in *Avengo v. Hart*, 25 La. Ann. 235, 13 Am. Rep. 133, it was held that it was the duty of the driver, seeking to pass another, to go to the left, and it was proper for the leading driver to pull his horse to the right, in order to allow the one attempting to pass him to pass on the left side.

In *Lonergan v. Martin*, 4 Misc. Rep. 624, 23 N. Y. Supp. 968, the facts were that, while driving along a street behind defendant, plaintiff turned out where there was sufficient room for the purpose of passing; defendant then, without warning, suddenly turned his horse against the plaintiff's horses, forcing them against an engine which was standing near the curb, then drove ahead; his hind wheel passing over a hoof of plaintiff's horse, and injuring him. The trial justice dismissed the complainant, but on appeal to the general term it was that the questions of negligence and contributory negligence should have been submitted to the jury.

From a consideration of all these cases, it seems that no definite rule as to the respective duties of persons passing or seeking to pass each other with vehicles has been adopted by all courts. But the rule, which seems to be based upon sound reasons, is that it is ordinarily the duty of each party to keep the proper side of the road, but this is not absolute. He is not bound to keep his side, but if he does not he must use more care and keep a better lookout to avoid collision than would be necessary, were he on the proper side. In a narrow street, he must not unnecessarily block the way, or crowd other travelers to one side, and he must use the highway in such a manner as not unreasonably to deprive other travelers of their equal right to the use of the street. *Hackett v. Alamito Sanitary Dairy Co.* (Neb.), 133 N. W. 227, 230.